

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230004195

APPLICANT REQUESTS: in effect, correction of his records to show:

- he was authorized and awarded the Purple Heart due to his Traumatic Brain Injury (TBI) on 20 March 2010
- a personal appearance before the Board

COUNSEL'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Legal Brief
- Enclosure 1: Army Board for Correction of Military Records (ABCMR) Letter
- Enclosure 2: Army Human Resources Command (AHRC) Denial letter for Purple Heart
- Enclosure 3: DD form 214 (Certificate of Release or Discharge from Active Duty)
- Enclosure 4: Officer Record Brief (ORB)
- Enclosure 5: Orders 008-307 Deployment Orders
- Enclosure 6: Photo
- Enclosure 7: Applicant's Statement for Purple Heart
- Enclosure 8: Letter of Support, 5 September 2018
- Enclosure 9: Letter of Support, 30 August 208
- Enclosure 10: Permanent Order 244-064 Award of Combat Action Badge (CAB) and Permanent Order 141-18 Valorous Unit Award
- Enclosure 11: Medical Documents
- Enclosure 12: DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- Enclosure 13: Orders 227-0012 Separation Orders
- Enclosure 14: Department of Veterans Affairs (VA) Rating
- Enclosure 15: Combat-Related Special Compensation (CRSC) Letter
- Enclosure 16: National Institutes of Health (NIH) Article on Military Related Traumatic Brain Injury (TBI) and Neurodegeneration

FACTS:

1. The applicant defers to counsel.

2. Counsel states:

a. "On 8 January 2010, then [applicant] received orders to deploy to Afghanistan in support of Operation Enduring Freedom. During his deployment, [applicant] served as the Executive Officer for Headquarters and Headquarters Company, 3rd Brigade Combat Team, 101st Airborne Division (Air Assault), and in the initial stage, was the officer-in-charge of the unit's Advanced Party for an extended period as the main body of the unit met with several transportation delays. As Executive Officer, he oversaw much of the [forward operating base] FOB major duties and was tasked with oversight and coordination of unit maintenance, company administration, operations, supply, communications, and training. These responsibilities required [applicant] to travel to and coordinate with other installations for materials and supplies as FOB Salerno prepared to expand its footprint to facilitate an expected surge in troops.

b. On 20 March 2010, in anticipation of the arrival of the main body, [applicant] drove his non-tactical government vehicle (NTV) to the container yard on FOB Salerno to ascertain the expected arrival of several containers of supplies. The container yard gate was standing open, and no sentry or sign was posted prohibiting entry. Immediately upon entering the container yard, an explosion detonated approximately five meters from [his] vehicle, causing the windows to shatter, the windshield of the vehicle to "spiderweb", and the rearview mirror to fall off.

c. [Applicant] has no recollection of taking the vehicle out of gear or turning off the ignition. At some point after the blast, he briefly remembers thinking that he was dead and wondering what killed him. After regaining consciousness, [applicant] recalls seeing smoke coming out of the muzzle of a nearby M777 155mm howitzer fired by the 3rd Battalion of the 320th Field Artillery Regiment. The weapon had been discharged to provide fire support just as [his] vehicle passed in front of it.

d. [Applicant] eventually opened the door and exited the vehicle. As soon as he got out, his legs felt wobbly and he fell down. Sergeant First Class (SFC) [REDACTED] and Sergeant (SGT) [REDACTED] from the FOB's Container Management Team witnessed the incident and were already hurrying over to see if [applicant] was alright. SFC [REDACTED] states that the 155mm howitzer was located 'near the entrance' and 'fired over [applicant's] vehicle' just 'as [they] saw him enter' the yard. SFC [REDACTED] states that [applicant's] vehicle jumped sharply to the left, came to a stop and was motionless for several seconds.

e. SFC ██████ was concerned about [applicant] 'due to the proximity of the vehicle to the blast.' SFC ██████ observed [applicant] exit the vehicle and sink 'quickly to the ground.' Upon arriving, he 'could see that [applicant] was dazed and confused', did not answer immediately, and seemed 'to be in a minor state of shock.' The Soldiers helped [him] to his feet. Later that night, [applicant] 'complained of dizziness, like he had been 'beat up.' SFC ██████ states that the perception was that [applicant] had suffered a concussion.

f. SGT ██████ states that he personally observed the M777 fire 'just as the red minivan driven by [applicant] was passing in front of it.' After hurrying to the scene, SGT ██████ states that '[applicant] looked stunned and had trouble standing.' He also observed that the 'van suffered some damages including the shattering of some side windows, cracks all over the windshield, [and] the rearview mirror had fallen off its mount and one of the side mirrors broke.'

g. [Applicant] was later awarded a CAB '[f]or being engaged by or engaging the enemy' during his deployment and his unit earned a Valorous Unit Award '[f]or extraordinary heroism in action against an armed enemy.'

h. After returning from the deployment, however, [applicant] began to experience significant issues commonly associated with a head injury, prompting his wife who is a Physical Therapist to insist he obtain treatment by medical personnel. On 19 June 2014, [applicant] was presented to the TMC Ambulatory Clinic complaining of memory problems, balance problems, irritability, and sleep problems. [He] indicated on the DVBIC TBI Screening tool that he had suffered a blast injury causing him to be dazed, confused, and see stars, and that resulted in concussion symptoms afterward. He was diagnosed with having suffered a "concussion with brief loss of consciousness" and mild TBI.

i. On 15 May 2019, [applicant] was seen at the Fort Riley TBI Clinic after undergoing an MRI of his brain. The MRI showed an abnormality in the left frontal portion of the brain consistent with someone who had taken a blast or blow to the right side as he had. The medical notes state that the MRI findings 'could be attributable to previous concussion.'

j. On 10 June 2019, an Informal PEB determined that [he] was physically unfit for continued service and recommended a 100% disability rating for his TBI and PTSD (in combination with postconcussive cognitive impairment). The PEB determined that [his] condition was the result of 'being within muzzle blast radius of artillery firing, being engaged with indirect fire.' The PEB further noted that [applicant] had earned the CAB as the 'direct result of armed conflict.

k. On 31 October 2019, the VA awarded [him] a 100% disability rating for

"service connection for TBI with comorbid PTSD with light sensitivity." On 1 April 2020, [applicant] was granted CRSC for his 100% disability rating for TBI with comorbid PTSD."

- I. The complete legal brief has been provided to the Board for their review.
3. A review of the applicant's official record shows:
- a. On 20 July 2006, a memorandum from U.S. Army Human Resources Command (AHRC) appointed the applicant as a Reserve Commissioned Officer.
 - b. DA Form 71 (Oath of Office - Military Personnel) shows the applicant took the oath of office as a Reserve Commissioned Officer on 5 August 2006.
 - c. Orders 008-307, published by Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, dated 8 January 2010 ordered the applicant to deploy in support of Operation Enduring Freedom for a period of 365 days with a proceed date of on or about 25 January 2010.
 - d. DA Form 199 (Informal PEB Proceedings), dated 10 June 2019 shows the applicant was found unfit for duty with a recommendation of 100% disability and that he be placed on the Temporary Disability Retired List (TDRL) with a reexamination in March 2020. His disability was for TBI with PTSD. The applicant did not concur with the finding and demanded a formal hearing. He did not attach a written appeal.
 - e. An ORB, dated 24 September 2018 shows the applicant was in Afghanistan from 12 January 2010 through 12 September 2010.
 - f. DD Form 214, shows the applicant entered active duty on 20 March 2008 and was honorably transferred to U.S. Army Reserve Control Group (Retired Reserve) on 30 October 2019 for disability, temporary (enhanced). The applicant had service in Iraq from 12 May 2008 through 5 February 2009 and in Afghanistan from 12 January 2010 through 12 September 2010. The DD Form 214 is void of award of the Purple Heart.
 - g. DA Form 199, dated 22 October 2021 found the applicant physically unfit for duty and recommended a rating of 70% and that he be permanently retired for disability for TBI and PTSD. The applicant concurred with the findings and waived a formal hearing in his case.
 - h. Orders D060-0021, published by Headquarters, United States Army Physical Disability Agency, dated 1 March 2022 removed the applicant from the TDRL and permanently retired him due to disability effective 1 March 2022.

4. The applicant provides the following documentation:

a. Enclosure 1: Letter from the ABCMR, dated 16 September 2021 directing him to AHRC regarding his request for award of the Purple Heart.

b. Enclosure 2: Letter from AHRC, dated 15 February 2022, which states:

(1) AHRC was unable to render favorable action concerning the applicant's request. The statutory and regulatory criteria governing the Purple Heart require it to be awarded for wounds received as a direct result of enemy action. The wound must have required treatment by a medical officer and been made a matter of official record. Military medical documentation from immediately after or close to the incident reflecting a diagnosis of and treatment for a qualifying wound must be provided.

(2) Based upon review of the forwarded documentation and coordination with the AHRC Office of the Surgeon General, AHRC determined the incident in question did not meet the criteria for award of the Purple Heart. When contemplating eligibility for this award, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound, and whether the wound was severe enough to require treatment by a medical officer. In order for concussions or TBI to qualify for the Purple Heart, they must result in either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident as outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8.

(3) In this particular case, there was no diagnosis of TBI at or near the date of the incident, nor was there documentation that medical treatment was received following the injury; AHRC did not locate any documentation detailing the applicant was restricted from full duty due to persistent signs or symptoms of TBI, to include functional impairment. As such, AHRC must conclude the incident does not meet the strict regulatory criteria for award of the Purple Heart.

c. Enclosure 3: DD Form 214, which was previously considered.

d. Enclosure 4: ORB, which was previously considered.

e. Enclosure 5: Orders 008-307, which were previously considered.

f. Enclosure 6: A photo of what appears to be a windshield.

g. Enclosure 7: Applicant's self-authored statement for Purple Heart Request Packet, dated 29 October 2020, which states:

(1) The applicant was writing to humbly request consideration for the Purple Heart for injuries he sustained in combat against the enemy on 20 March 2010 at FOB Salerno, Afghanistan, while serving as Executive Officer of Headquarters and Headquarters Company, 3rd Brigade Combat Team, 101st Airborne Division.

(2) Upon arriving in Afghanistan, he served as the acting company commander for several weeks, while the main body dealt with several transportation delays enroute from Fort Campbell. During this period, a portion of his duties included ensuring that several dozen 40-foot containers of equipment and supplies arrived at the FOB. The transportation norm for these containers was to travel by rail from Fort Campbell to the port of embarkation in Virginia, then by ship to the port of Karachi in Pakistan, by local vendor "jingle truck" to Bagram Airfield, and then to their FOB again by "jingle truck". Upon arrival, they were to be offloaded by civilian contractors from Fluor in their container yard and the container yard personnel would notify the applicant.

(3) On 20 March 2010, the applicant drove to the container yard in a small 5-cylinder non-tactical European minivan assigned to him for getting around the FOB. As he entered the yard, a colossal explosion occurred. The sound and concussion of which can only be understood by someone who's been through it. From the driver's seat, it felt like the Earth blew up. Before entering the yard, the applicant remembers that the gate was standing wide open and there was no sign or Soldier indicating that the area was off-limits in any way. Even if it had been, as FOB Mayor, the applicant was free to go wherever his duties took him. The explosion caused the windshield of his vehicle to spider web and the rearview mirror fell onto the floor, as well as the side windows on the passenger side to shatter. The applicant apparently lost consciousness for some time, as he does not recall stopping the vehicle or taking it out of gear. He does remember sitting in a dazed fog thinking "so this is what it feels like to be dead." At some point, he turned his head to see what killed him and saw smoke coming out of the muzzle of the M777 155mm howitzer pointed at him nearby. The howitzer, which was located immediately inside the entrance to the container yard had been called to provide fire support to a unit outside the wire and had fired over the applicant's vehicle just as he passed in front of it.

(4) As the applicant came to the realization of what happened, he eventually opened his door and exited the vehicle. As soon as he got out, he fell down. He was shaking and had very little grasp of reality. Two Soldiers who witnessed the incident rushed to the applicant's aid. After several minutes pulling himself together, the applicant took the van to the contractors responsible for maintenance and repairs and continued with his day on foot. Notwithstanding that he was a former enlisted Infantry noncommissioned officer, the culture of his unit for officers was such that a leader

simply did not go to sick call unless he was dying. Between this and being fairly rattled mentally, he initially declined the two Soldiers taking him to the medical hut, though he did experience the effects of the blast for days.

(5) In the weeks, months, and years following that deployment, the applicant's wife, who is a physical therapist and had significant training in the recognition of head injuries, began to grow concerned at the signs/symptoms she was observing in the applicant. One day she asked him if he had ever gotten blown up in Afghanistan. After learning the details of the incident, she insisted the applicant seek medical attention immediately.

(6) Over the ensuing years, the applicant experienced significant issues commonly associated with a head injury. An Audiologist evaluation in 2018 and again in 2020 determined that both of his ears had significant hearing loss sufficient to warrant a P2 profile. The Audiologist stated the hearing in his right ear (the one facing the blast) had middle ear damage associated with a strong concussive effect. In her opinion this was most certainly the result of a blast on the right side. Neurologists and Psychiatrists were consulted, and eventually the TBI clinic at Fort Riley ordered an MRI of the applicant's brain, which found an abnormality in the left frontal portion of the brain consistent with someone who had taken a blast or blow to the right side of the head.

(7) The applicant was medically retired from the Army after 30 years of service on 30 October 2019 and has a 100% permanent and total VA designation for TBI and PTSD. Several providers believe the MRI referenced indicates the onset of Chronic Traumatic Encephalopathy. The applicant's life has degenerated into a never-ending series of cognitive struggles like learning new tasks, misunderstanding directions at work, forgetting the names of family members, and even forgetting to turn off the car in the driveway only to find it still running eight hours later. On multiple occasions, he has shown up to work on his day off because he lost track of the day of the week. These struggles have made it extremely difficult to succeed at work. The applicant's request for a Purple Heart is not a request for personal accolades, but something that will ultimately qualify his little boy for educational help with school expenses, when the applicant is no longer employable.

h. Enclosure 8: Letter of support from a retired sergeant first class (SFC), dated 5 September 2018, states in pertinent part, he and another Soldier witnessed a minivan entering the container yard, which was driven by the applicant. Just as the applicant entered the M777 155mm howitzer, located on the other side of the yard, fired over the applicant's vehicle. Due to the proximity of the vehicle to the blast, the SFC and another Soldier went to check on the applicant who exited the vehicle and fell to the ground. The

applicant was dazed and confused. They asked if the applicant wanted to go to the hospital and he said no. The SFC followed up with the applicant and the applicant said he was dizzy and felt like he had been beat up.

i. Enclosure 9: Letter of support from a SGT, dated 30 August 2018, states in pertinent part, the SGT served in Afghanistan from November 2009 to October 2010. He and a SFC were in the container yard when the applicant drove in as a gun was fired in front of his minivan. When the SGT and SFC arrived to help the applicant, the applicant looked stunned and had trouble standing. The minivan suffered some damages including the shattering of some windows, cracks all over the windshield, the rearview mirror had fallen off its mount, and one of the side mirrors broke. The SFC and SGT looked over the applicant and there did not appear to be any visible wounds. The SFC and SGT tried to convince the applicant to go to the doctor, but he refused. They saw him several hours later and the applicant was still visibly shaken.

j. Enclosure 10: Permanent Orders 244-064, which were previously considered. Permanent Order 141-17, published by AHRC, dated 21 May 2013, which awarded the applicant's unit the Valorous Unit Award for extraordinary heroism in action against an armed enemy from 1 April 2010 to 31 August 2010. Also included is the narrative for the Valorous Unit Award and the award certificate.

k. Enclosure 11: Medical documents, which show on 19 June 2014, the applicant was seen for injuries caused by other explosive materials. The approximate date of the injury was 15 January 2010. The applicant indicated he had been injured in a blast as well as during a football game when he had a blow to the head. He was dazed and confused and was having memory problems, balance problems, irritability, and sleep problems. His diagnosis was concussion with brief loss of consciousness. The Armed Forces Special Screening for TBI was positive. The medical documents are available for review by the Board.

l. Enclosure 12: DA Form 199 which was previously considered.

m. Enclosure 13: Orders 227-0012, published by Headquarters, United States Army Garrison, Fort Riley, dated 15 August 2019 reassigned the applicant for separation processing with a retirement/separation date of 30 October 2019. The retirement type was temporary disability. Percentage of disability was 100%. Disability was based on injury or disease received in the line of duty as direct result of armed conflict or caused by instrumentality of war and incurred in the line of duty during a period of war defied by law. The disability resulted from a combat related injury.

n. Enclosure 14: Letter from the VA, dated 20 October 2020, shows the applicant received 100% disability; however, it does not indicate what disability he received it for.

o. Enclosure 15: Letter from AHRC, dated 1 April 2020, shows the applicant received CRSC for TBI with comorbid PTSD with light sensitivity. The condition was granted due to the applicant's combat award.

p. Enclosure 16: NIH article on Military-related TBI and neurodegeneration, dated 4 December 2014, which is available for the Board's review.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board noted that the criteria for the Purple Heart require substantiating evidence to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record. In this case, the Board found no evidence that would contradict the findings and conclusions of AHRC. Therefore, the Board determined the evidence in this case does not demonstrate that the criteria for entitlement to the Purple Heart have been met.


BOARD VOTE:


<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/24/2024

X 

CHAIRPERSON


I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

b. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. When contemplating an award of the Purple Heart, the key issue that commanders must take into consideration is the degree to which the enemy caused the

injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite, but is not the sole justification for award.

d. Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mild TBI or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident.

e. Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mild TBI or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

f. When recommending and considering award of the Purple Heart for a mild TBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

2. Army Directive 2011-07 (Awarding the Purple Heart), dated 18 March 2011, provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the Purple Heart for concussions (including mild TBI and concussive injuries that do not result in a loss of consciousness). The directive also revised AR 600-8-22 to reflect the clarifying guidance.

a. Approval of the Purple Heart requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the Soldier's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. A medical officer is defined as a physician with officer rank. The following are medical officers: an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, U.S Code, section 101.

d. A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants and other medical professionals qualified to provide independent treatment (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the Purple Heart for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

f. The following nonexclusive list provides examples of signs, symptoms or medical conditions documented by a medical officer or medical professional that meet the standard for the Purple Heart:

(1) Diagnosis of concussion or mild TBI;

(2) Any period of loss or a decreased level of consciousness;

(3) Any loss of memory of events immediately before or after the injury;

(4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and

(5) Intracranial lesion (positive CT or magnetic resonance imaging (MRI) scan).

g. The following nonexclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the Purple Heart:

(1) Limitation of duty following the incident (limited duty, quarters, etc);

(2) Pain medication, such as acetaminophen, aspirin, ibuprofen, etc., to treat the injury;

(3) Referral to a neurologist or neuropsychologist to treat the injury; and

(4) Rehabilitation (such as occupational therapy, physical therapy, etc.) to treat the injury.

h. Combat theater and unit command policies mandating rest periods or downtime following incidents do not constitute qualifying treatment for concussion injuries. To qualify as medical treatment, a medical officer or medical professional must have directed the rest period for the individual after diagnosis of an injury.

4. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//